

# WATER RESERVATION

OCT.

*update*

1992

WATER RESOURCES DIVISION

MONTANA DEPARTMENT OF NATURAL

RESOURCES AND CONSERVATION

## BOARD MAKES FINAL DECISION ON APPLICATIONS ABOVE FORT PECK DAM! (see page 2)

### *Purpose of the newsletter*

The *Water Reservation Update* is published periodically to keep Montanans informed about the ongoing water reservation proceeding in the state's Missouri River basin. This issue will bring you up to date on the Board of Natural Resources and

Conservation's final decision on water reservation applications above Fort Peck Dam. It also provides a brief description of the reservation process and discusses the status of applications to reserve water in the basin below Fort Peck Dam.

### *The Missouri basin reservation proceeding: an overview*

In 1985, the Montana Legislature directed the Department of Natural Resources and Conservation (DNRC) to initiate and coordinate a proceeding to allow for water to be reserved in the Missouri and Little Missouri River basins. The reservation proceeding was begun for two reasons:

- (1) The comprehensive planning required in a reservation process was seen as a way to encourage more coordinated development of the basins' water.
- (2) The reservation proceeding was regarded as a way for Montana to build a strong legal foundation for protecting its share of Missouri River water from downstream states.

Water reservations present the opportunity for water to be set aside for future diversion and consumption and for maintaining instream flows to protect fisheries, recreation, and water quality. Only public entities such as local governments, conservation districts, and state and federal agencies can apply for and hold water reservations.

Unlike water use permits that usually must be put to beneficial use within three to four years after the application date, reservations

allow up to 30 years or more for the water to be put to beneficial use—while still continuing to maintain an early priority date. Reservations also are the only way to protect instream flows with a water right under Montana law. Any reservations granted in the Missouri basin will have a July 1, 1985 priority date, junior to that of any claims or permits issued before then.

DNRC coordinates the reservation process, but the Board of Natural Resources and Conservation (Board) decides whether to grant water reservations. (This seven-member board is appointed by the governor.)

Because the Missouri basin is so large, the reservation proceeding has been split into two parts. Considered first were water reservation applications in the basin's upper portion, which encompasses the drainage area above Fort Peck Dam. After an environmental review was made and a contested case hearing was held, the Board made its final decision on upper basin applications on June 30, 1992. Now under consideration are water reservation applications in the basin below Fort Peck Dam, including the Little Missouri and Milk river basins.

## Water reservation applications above Fort Peck Dam

### *Board Makes Final Decision*

Applications for water reservations in the Missouri basin above Fort Peck Dam were due by July 1, 1989. DNRC received applications for consumptive use from 18 conservation districts for 226 irrigation projects; 18 municipalities; and the U.S. Bureau of Reclamation to pump water from the Missouri River for diversion into the Milk River to alleviate water shortages. Instream flow requests submitted to DNRC included applications from the Department of Fish, Wildlife and Parks to protect fish, wildlife, and recreation on 283 stream reaches; the Department of Health and Environmental Sciences to protect water quality; and the U.S. Bureau of Land Management to protect fisheries and wildlife on 31 headwater streams.

### *The Environmental Impact Statement*

Because water reservations could significantly affect the human and natural environment, DNRC prepared an environmental impact statement (EIS) to let the public know about any known or foreseeable beneficial and adverse effects that would be caused by granting or denying each reservation request. The EIS involved two major phases.

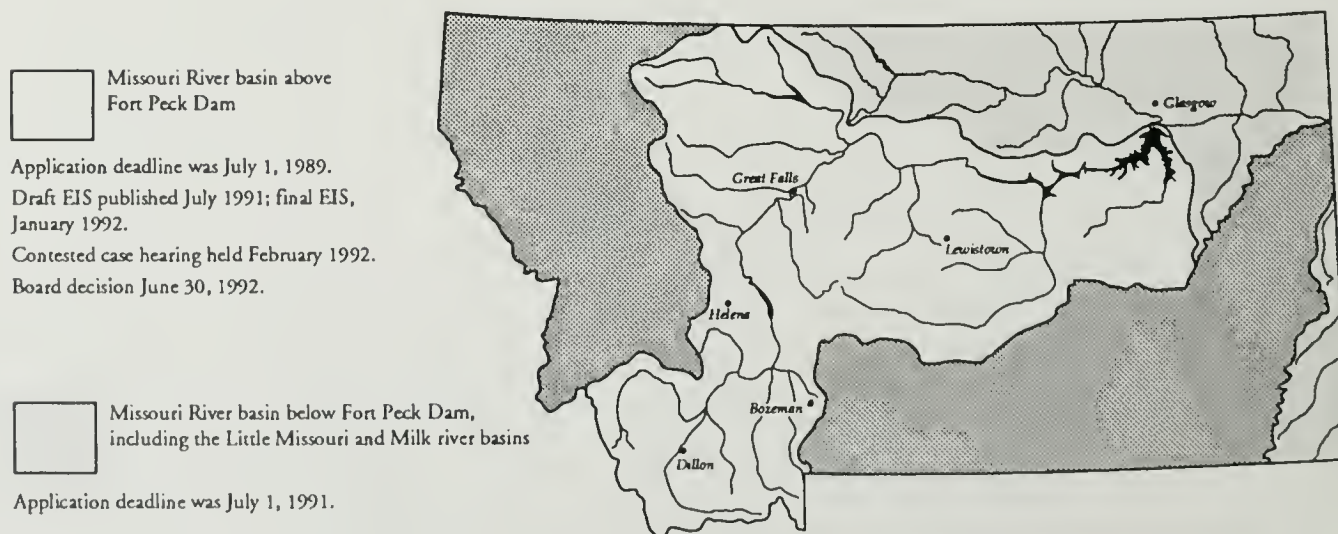
- (1) DNRC held 10 public scoping meetings throughout the state during July

1989 to determine which issues the public wanted to see addressed in the EIS. Along with information from state and federal agencies and DNRC staff, these issues were combined with research results and other data to prepare the draft EIS. The draft described the basin's existing natural and human environment and presented potential impacts of the proposed reservations. The document also identified reservation alternatives and provided information on whether the proposed reservations met the Board's decision criteria. DNRC published the draft EIS and distributed it during July 1991.

- (2) Soon after the draft EIS was published, DNRC held 10 more public hearings to gather written and oral comments on the draft; the public had 75 days to submit written comments. DNRC responded to these comments in the final EIS and also provided information on issues raised after the draft was published. The final EIS was distributed during January 1992.

### *The Contested Case Hearing*

According to Montana law, all water right holders and other water users that potentially could be affected by the reservations had to be notified and given the opportunity to object at a legal hearing. During



July 1991, DNRC sent notices of the pending upper basin applications to about 11,000 of the basin's water right holders. The notice also was published in 11 newspapers of general circulation in the basin. As a result, more than 500 objections to the reservations were received. The Board hired Mr. Peter Stanley of Billings as the hearing examiner to preside over the formal hearings held for three weeks in Helena. In addition to these hearings, Mr. Stanley held five informal hearings so that limited parties could testify in Great Falls, Lewistown, Bozeman, Glasgow, and Dillon. The hearings began February 3, 1992, and ended February 28, 1992. The hearing

examiner then drafted for the Board a proposed order that included his findings, conclusions, and recommended decision on the reservation applications.

### *The Board's Decision*

During a hearing held in Helena on June 15, 1992, the Board allowed objectors and water reservation applicants to present exceptions and oral arguments to the hearing examiner's proposed order. The Board then began deliberations and, on July 1, 1992, reached a final decision on the upper basin applications. The decision included the following actions:

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## *Water reservation applications below Fort Peck Dam*

July 1, 1991, was the deadline for public entities to submit applications to reserve water in the lower Missouri basin. DNRC received applications for consumptive use from 11 conservation districts for 471 irrigation projects, and 14 municipalities. The Department of Fish, Wildlife and Parks applied to reserve water for instream flows on 21 stream reaches. A more detailed list of the applicants' requests is available from DNRC.

### *The EIS and Contested Case Hearing*

As it did with the upper basin, DNRC will prepare an EIS to address all lower basin water reservation applications. Preliminary work on the EIS is underway, and DNRC will be holding scoping meetings throughout the basin during November 1992. A schedule for the meetings is shown below.

After the meetings, DNRC will compile and publish a draft EIS that will be distributed to the public for comments. Public meetings will again be held to gather written and oral comments on the draft. DNRC then will prepare a final EIS that responds to the comments and provides information on issues raised after publication of the draft EIS.

Water right holders in the Milk, Lower Missouri, and Little Missouri basins, along with other individuals and groups that could be affected by the reservations, will receive notice of the reservation applications, and a contested case hearing will be held. Dates for the notice and hearing have not been set, but they will be published in newspapers of general circulation.

CITY	LOCATION	DATE	TIME
Baker	High School Audio/Visual Room	November 16	7:00 pm
Havre	Northern Montana College - Crowley Conference Room, Student Union	November 17	7:00 pm
Wolf Point	High School Auditorium	November 17	7:00 pm
Plentywood	Courthouse - Public Library Meeting Room	November 18	7:00 pm
Glasgow	Cottonwood Inn - Banquet Room	November 19	7:00 pm



*Water reservation  
applications above  
Fort Peck Dam  
(continued from page 3)*

- The Board granted 14 *municipal* applications with priority over all other reservations, although the amount of water granted to some cities was less than that requested. The total volume of water granted to municipalities was 22,046 acre-feet per year. The Board denied three municipal applications, and one municipality withdrew its application.
- The Board granted three applications for instream reservations. The *Department of Health and Environmental Sciences* was granted a reservation for the full amount it requested with second priority. The Board granted, with some modifications, requests from the *Department of Fish, Wildlife and Parks* and the *Bureau of Land Management* with third and fourth priority, respectively. All instream reservations were made to run concurrently with each other. The Board also conditioned all instream flow reservations granted so that they would have no force and effect in any drainage basin or stream closed to new water use permit applications.
- The Board granted 15 *conservation district* applications, at least in part, while denying three applications. The total amount of water reserved was 166,605 acre-feet per year for 118 irrigation projects covering 58,464 acres. The conservation district reservations were given fifth priority.
- The Board granted the *Bureau of Reclamation's* reservation request to divert water from the Missouri River to the Milk River, but for a lesser amount than that requested.

For a copy of the Board's final decision on upper basin water reservation requests, call Larry Dolan at 444-6627, or write to him at DNRC, 1520 E. Sixth Ave., Helena, MT 59620-2301.

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